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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter Of)	
)	
Bell Operating Company)	CC Docket No. 96-21
Provision Of Out-Of-Region)	
Interstate, Interexchange Services)	

NYNEX REPLY COMMENTS

NYNEX Corporation ("NYNEX") hereby submits its Reply Comments in response to other parties opposing the Notice of Proposed Rulemaking ("NPRM") issued in this proceeding.

I. THE NPRM ACTS TO FURTHER COMPETITION IN ACCORDANCE WITH NATIONAL TELECOMMUNICATIONS POLICY

NYNEX supports the Commission's tentative conclusions that subsidiaries of the Bell Operating Companies ("BOCs") providing out-of-region interstate, interexchange services should be regulated as "nondominant" carriers when operating in accordance with the separation conditions earlier identified in the Competitive Carrier proceeding. Adoption of these conclusions would put the BOC long distance affiliate on exactly the same regulatory basis as is currently applied to every other LEC-affiliated long distance carrier. Moreover, the Commission should act expeditiously. The national telecommunications policy

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recently enacted by Congress is to permit the BOCs immediately to enter out-of-region long distance markets:

“OUT-OF-REGION SERVICES - A Bell operating company, or any affiliate of that Bell operating company, may provide inter-LATA services originating outside its in-region States after the date of enactment of the Telecommunications Act of 1996 . . .” (Section 271 (b)(2)).

Effective BOC market entry depends on treatment as a “non-dominant” carrier (NYNEX 5-7). Further, the scheme of reduced regulatory requirements applied to domestic, interstate “non-dominant” carriers is itself part of the new national telecommunications policy. That is, the Commission has been directed to act in accordance with “a procompetitive, de-regulatory national policy framework designed to accelerate rapidly private sector development of advanced telecommunications and informative technologies and services to all Americans by opening all telecommunications markets to competition” (emphasis supplied).¹ The tentative conclusions of the NPRM are consistent with the Commission’s past precedent and the terms of the *1996 Act*.²

¹ Joint Explanatory Statement of The Conference Committee, H.R. Conf. Rep. No. 458, 104th Cong., 2d Session 1 (1996).

² Other BOCs have properly pointed out that the 1996 Act does not require the separate subsidiary envisioned by the NPRM. This is correct. However, NYNEX believes that the NPRM provides an excellent first regulatory step towards enabling effective BOC entry into the long distance service markets. Importantly, the Commission has also committed itself to further consider modification or elimination of these separation conditions in the near future (NPRM ¶11). Timely further review is necessary to ensure that BOC competitive long distance efforts are not hobbled by excessive and burdensome regulatory restraints.

II. INCUMBENT CARRIERS WRONGLY SEEK TO REVISIT COMMISSION PRECEDENT OR REWRITE THE 1996 ACT

The Commission has cautioned all parties that it would not kindly regard frivolous arguments that threaten needlessly to consume the Commission's limited resources in addressing previously-decided issues. As demonstrated above, the Commission proposes to act herein in accord with both past precedent and new law. Nevertheless, many of the incumbent long distance carriers either oppose the NPRM as "premature"³ or seek further conditions to delay or encumber BOC entry. This opposition is remarkable given that each of the industry opponents functions under the same "non-dominant" scheme of regulation. They are simply using the Commission's processes to "hamstring" prospective competitors.

Further, opponents plainly seek to apply conditions to the BOCs that are patently inconsistent with Commission precedent, the 1996 Act, and the Commission's schedule of proceedings to implement the Act, as follows:

Commission Precedent. All commenters agree that the NPRM follows the long-standing precedent established in the Competitive Common Carrier proceeding. Certain parties argue that the BOCs are different from the LECs at issue therein in concentrated scale and scope, but none show that these arguments should lead to any different conclusion.⁴ In fact, GTE's local exchange operations are larger than any of the BOCs. Commenters also propose to pile on the BOC affiliates a host of additional accounting and separation

³ See, e.g., MCI at 17. Remarkably, one entity even questions the Commission's "priorities" in enabling BOC competition in accordance with the direction of Congress (ALTS at 3).

⁴ See, e.g. Comptel at 6.

restrictions beyond those established by Commission.⁵ A decade of experience has shown that the proposed conditions are satisfactory, even for in-region long distance services of major incumbent carriers like SPRINT. There is no reason to presuppose that they are insufficient here. The Commission should follow its precedent and reject these proposals.

The 1996 Act. Congress has differentiated between the BOC separation requirements that apply to “out-of-region” and “in-region” long distance services.⁶ Importantly, no separation requirements were established for “out-of-region services.”⁷ Nevertheless, some commenters seek to delay effective BOC “out-of-region” entry until “in-region” entry is authorized or to apply “in-region” separation conditions to “out-of-region” services. After years of detailed debate, Congress has provided specific conditions for BOC participation in each of these markets. Arguments to the contrary now border on the frivolous. Further speculative concerns about possible abuse of in-region network facilities have been addressed by Congress and specific requirements to open BOC in-region local exchange systems have been established.⁸ Although many commenters may wish to revisit legislative determinations, the Commission should not do so.⁹

Future Commission Proceedings. Finally, some commenters seek definition in this proceeding of current issues under the 1996 Act, like the proper use of CPNI, which have clearly been set for other proceedings.¹⁰ Like other “telecommunications carriers,” the BOC long distance affiliates will comply with such rules as they are determined and applied. The resolution of such issues should not delay the conclusion of this NPRM.

⁵ MCI at 18-23.

⁶ See, Sections 271 and 272 of the 1996 Act.

⁷ See, e.g., SPRINT at 3-4.

⁸ See, e.g., Sections 251 and 252 of the 1996 Act. Thus, historic “MFJ Court” debate should not be rehashed herein. See, e.g., Excel at 5-6. National telecommunications policy has moved on.

⁹ Perhaps most surprisingly, some commenters subtly ask the Commission to change the Congressional definition of “Out-Of-Region” and “In-Region” services by excluding services and operating areas from regulatory relief in this proceeding. See, e.g., Comptel at 12-14. At their heart, these arguments ask the Commission to overrule Congress. Obviously, it should not.

¹⁰ See, e.g., Cable & Wireless at 2.

The Commission has much work to do open "all telecommunications markets to competition." Its efforts will be frustrated if it moves backward - - as urged by commenters in this proceeding - - to construct elaborate new regulatory requirements. These proposals should be summarily rejected.

III. CONCLUSION

The Commission serves the public interest in the NPRM by enhancing competition in long distance services in accordance with new national telecommunications policy. Conversely, the arguments presented in opposition to the NPRM provide no basis for departing from established precedent and new Congressional policy. They should not be allowed to exhaust limited Commission resources in readdressing long-settled issues. The tentative conclusions reached in the NPRM should expeditiously be adopted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Susan Sonnenberg, hereby certify that on the 25th day of March, 1996, a copy of the foregoing NYNEX Reply Comments in CC Docket No. 96-21 was served on each of the parties listed on the attached Service List by first class U.S. mail, postage prepaid.


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